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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/668,673	09/23/2003	Mark Trocki	VI/00-001.CIP.D2	5595

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EXAMINER

HAN, MARK K

ART UNIT	PAPER NUMBER
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3767

DATE MAILED: 10/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/668,673

Applicant(s)

TROCKI ET AL.

Examiner

Mark K. Han

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 July 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 16 is/are rejected.
- 7) ☒ Claim(s) 14, 15 and 17 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 1-11 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,312,410 to Yamamoto.

Yamamoto discloses a housing 10, drive member 11, plunger 3, syringe 4, syringe retaining mechanism 200, capture members 204/205, actuator member 210 and spring 219. See Figures 1-10.

2. Claims 1, 2, 4, 10 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,695,271 to Goethel.

Goethel discloses an injector having a housing 14, drive member 27, syringe retaining mechanism 18 and capture member (annular groove in 18). See Figures 1-5.

3. Claims 1, 13 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,545,140 to Conero et al. (hereinafter "Conero").

Conero discloses an injector having a housing 10, drive member 24 and syringe retaining mechanism 35. See Figures 1-9.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yamamoto or Goethel in view of U.S. Patent No. 5,383,858 to Reilly et al. (hereinafter "Reilly").

Yamamoto or Goethel discloses the claimed invention as shown above. Neither Yamamoto nor Goethel, however, discloses an encoding device. Reilly discloses an encoding device 70 on a syringe. See Figure 2. It would have been obvious to one of ordinary skill in the art to modify the invention of either Yamamoto or Goethel, by including an encoding device, as suggested by Reilly, in order to prevent misdose of medication to a patient.

***Allowable Subject Matter***

5. Claims 14, 15 and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

6. Applicant's arguments filed 21 July 2006 have been fully considered but they are not persuasive. Applicant appears to argue that the syringe of Yamamoto must be oriented specifically in order to be mounted by holding members. The basis for Applicant's argument

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appears to be that the holding members must be in a specific orientation in order to accept flange part 5 of the syringe. See Remarks, p. 4, lines 6-12. However, the holding members are not part of the syringe. Flange 5 is part of the syringe and it does not seem that Yamamoto requires that these flanges be in a certain position in order to be mounted on the holding members. The rejection under 35 U.S.C. §102(e) to Yamamoto, is hereby maintained.

### *Contact Information*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark K. Han whose telephone number is 571-272-4958. The examiner can normally be reached on Monday to Friday, 9 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on 571-272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Mark K. Han  
Patent Examiner  
Art Unit 3767

mkh

October 1, 2006

KEVIN C. SIRMONS  
SUPERVISORY PATENT EXAMINER

